19 4

File No. Foreigners II/48

LEGAL DEPARTMENT

B **BRANCH**

K

Subject:-

Rules and Notifications under the Foreigners Act, 1946.

D3/C1-

Foreigners II/48.

File No.

301-D

K

Political and Services Department.

Foreigners Order, 1946.

Bombay Castle, April 1946.

No. :- In pursuance of sub-paragraph (2) of paragraph 2 of the Foreigners Order, 1946, read with the Government of India, Ministry of Home Affairs, Notification No. 9/9/46-L-Political (EW), dated the 10th February 1946, the Government of Bombay is pleased to appoint the officers specified in column 1 of the schedule appended hereto, as the civil authorities for the purposes of the said Order for the areas specified against them in column 2 thereof.

SCHEDULE.

Officers. 1.	Areas. 2
The Commissioner of Police, Bombay, and the Deputy Commissioner of Police, C.I.D. Special Branch, Bombay.-	Greater Bombay.
All District Superintendents of Police.	Areas within their respective juri-sid-ctions.
Superintendents of Railway Police.	Areas within their respective jurisdictions within the Province of Bombay.

By order of the Governor of Bombay,

Chief Secretary to Government.

S.A.K.
31-5
4 copies

14/6
19/6

VIEWS OF THE R.L.A.

The notification at p. 41, which is based on the lines of Government notification in the P.& S.D.No. W. 78-II, dated 24-4-42, is neither valid nor necessary for the reasons stated in the next paragraph.

2. The above notification No. W. 78-II, dated 24-4-42, had delegated to certain Police Officers the functions of making orders of the nature specified in clauses (d), (e) and (f) of sub-section (2) of section 3 of the Foreigners Act, 1940, in virtue of the powers contained in clause (b) of the Government of India, Home Department, notification No.952/41- Political (EW), dated the 16th January 1942 (vide R.L.A.'s opinion No. 141-Confl., dated 2-4-42). The Government of India have, however, in their letter No. 9/1/47-Poll. (EW), dated the 7th October 1947 (p. 15), doubted the validity ov the entrustment made in clause (b) of the notification referred to above and have therefore issued a fresh delegation in their notification at p. 17 ante which does not contain any entrustment similar to that made in clause (b) of the notification No. 9/52/41-Poll. (EW), dated the 16th January 1942. The powers under section 3(2)(d), (e) and (f) of the Foreigners Act, 1946, can now only be exercised by the Provincial Government, and the question of further delegating such powers to Police officers does not arise nor can such powers to Police be now validly delegated to any subordinate officers of the Provincial Government. In any case, section 11 of the Act of 1946, to which reference has been made in the P.& S.D. draft notification does not contain any provisions corresponding to section 10 of the Foreigners Act of 1940 on which the Government of India Notification of 16-1-42 relied.

S.A.K.
31-5 / 4copies

3. Subject to the following observations, a revised draft notification in place of the one at p. 43 is sent herewith-

(i) The power to appoint civil authorities is contained in paragraph 2(2) of the Foreigners Order, 1946. The reference to paragraph 3 in H.& S.D. draft has, therefore, been corrected.

(ii) It is not necessary to state in the preamble under that authority the Foreigners Order is made. The reference to the Foreigners Act, 1946, and to the amending Act of 1947 has therefore been deleted.

(iii) It is not necessary to supersede the P.& S.D notification No. 3306/34, dated the 30th August 1939, as with the supersession of the Foreigners Order, 1939, the said notification automatically lapses.

(iv) As the jurisdiction of the Commissioner of Police, Bombay, and the Dy. Commissioner of Police, Bombay, C.I.D., Special Branch, Bombay, has been extended to the Greater Bombay (which is a larger area than city of Bombay) by the Greater Bombay Laws and the Bombay High Court (Declaration of Limits-Repeal and Re-enactment) Act, 1947 (Bom. LII of 1947), the area of Greater Bombay has been substituted in place of the area of "City of Bombay" as stated in the P.& S.D. draft. The P.& S.D. should verify if the Schedule is in order from the administratice point of view.

Sd/-

Remembrancer of Legal Affairs.

J.H. to P.& S.D.No. 153.-Confl, dated the 7th April 1948

S.A.K.
1-5
4 copies